

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

GEORGE TAYLOR,

Plaintiff,

v.

DANIEL YANISCH,

Defendant.

Case No. C04-5465FDB

ORDER ADOPTING  
REPORT AND  
RECOMMENDATION

The Magistrate Judge recommends dismissal of this cause of action because it does not appear that the complaint was served within 120 days of filing. The Complaint was filed October 21, 2004, Plaintiff was not proceeding *in forma pauperis*, and had the duty to serve the complaint. The matter came to the Magistrate Judge's attention when Plaintiff filed a motion, which was denied on March 29, 2005, and Plaintiff was ordered to show cause why the matter should not be dismissed for failure to serve the Complaint. Plaintiff did not respond to the show cause order, and the Magistrate Judge issued his Report and Recommendation. Plaintiff filed objections to the Report and Recommendation asserting "Serve [sic] was made by waiver on 04/03/ 2005. See exhibit 1." Exhibit 1 is a form "Notice of Lawsuit and Request for Waiver of Service of Summons." This document, however, does not appear on the docket of this case and only appears as part of Plaintiff's objections. This is insufficient to overcome the Magistrate Judge's recommendation in this case.

The Court, having reviewed, the Report and Recommendation of Magistrate Judge J. Kelley

1 Arnold, objections to the Report and Recommendation, and the remaining record, does hereby find  
2 and ORDER:

- 3 (1) The Court adopts the Report and Recommendation;
- 4 (2) This action was never properly served and plaintiff has not responded to a court  
5 order. It has been over 120 days since the action was filed.
- 6 (3) The action is **DISMISSED WITHOUT PREJUDICE**.
- 7 (4) The Clerk is directed to send copies of this Order to plaintiff and to the Hon. J. Kelley  
8 Arnold.

9 DATED this 13<sup>th</sup> day of June 2005.

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11 FRANKLIN D. BURGESS  
12 UNITED STATES DISTRICT JUDGE  
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